IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 25TH JUNE 2007 / 4TH ASHADHA 1929

WP(C).No. 19401 of 2007(I)

AGAINST THE ORDER DATED 08/07/2003 IN IA 278/2003 IN OS.333/1999 of MUNSIFF COURT, KODUNGALLUR

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PETITIONER:

GIREESAN, S/O.GOVINDAN,
KANJIRATHARAYIL, LOKAMALESWARAM VILLAGE,
KODUNGALLOORE TALUK.

BY ADV. SRI.T.H.ABDUL AZEEZ

RESPONDENTS:

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1. RAJU, S/O.GOVINDAN, KANJIRATHARAYIL,
LOKAMALESWARAM VILLAGE, KODUNGALLOOR TALUK.

2. VENU, S/O.GOVINDAN, KANJIRATHARAYIL,
LOKAMALESWARAM VILLAGE, KODUNGALLOOR TALUK.

3. YASODHA, W/O.GOVINDAN, KANJIRATHARAYIL,
LOKAMALESWARAM VILLAGE, KODUNGALLOOR TALUK.

4. MANI, S/O.GOVINDAN, KANJIRATHARAYIL,
LOKAMALESWARAM VILLAGE.

5. SUBRAMANIAN, S/O.GOVINDAN,
KANJIRATHARAYIL, LOKAMALESWARAM VILLAGE.

6. SANTHA, D/O.GOVINDAN, KANJIRATHARAYIL,
LOKAMALESWARAM VILLAGE.

7. SAROJINI, D/O.GOVINDAN,
KANJIRATHARAYIL, LOKAMALESWARAM VILLAGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 19401 OF 2007 I

Dated this the 25th June, 2007.

JUDGMENT

This writ petition is filed challenging the order passed in I.A.1869 & 1870/06 in O.S.333/99. The court, after considering the matter, declined to set aside the preliminary decree passed by it but set aside the sale conducted by the commissioner in the final decree application on the ground that it is done against Rule 234 (2) of the Civil Rules of Practice. It is true that when a sale is ordered to be conducted among sharers it shall be held in open court on a day to which the case is adjourned for the purpose. As per the rule the highest bid shall be accepted and the sale confirmed at once unless the sale is adjourned to some other date. Unfortunately in the case before us commissioner was appointed to inspect the property for the purpose of passing a final decree. He reported that the property is not partible by metes and bounds but the court instead of ordering a sale among sharers in open court directed the commissioner to conduct the sale among sharers. It was done and a final decree was passed. This is against the mandate of Rule 234(2) of the Civil Rules of Practice and it has been so held by this Court in the decision reported in **Anthony Ammal v. Antony**

(1983 KLT 645). So, setting aside of the sale by court is not to be found fault with but the court omitted to notice one thing. After setting aside the final decree the court should have restored the final decree application back to file and should have made arrangements to conduct the sale in the open court itself by fixing a date after hearing both sides. Therefore, the order under challenge is modified and the trial court is directed to restore the final decree application to file and then with notice to all parties conduct a fresh sale in open court among the sharers and dispose of the matter in accordance with law. Writ petition is disposed of accordingly. The learned Munsiff may dispose of the matter, at any rate, within ten weeks from today and the writ petitioner is directed to produce a copy of this judgment before the said court for necessary compliance.

M.N.KRISHNAN
Judge

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